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FORTRESS SYSTEMS, LLC d/b/a/ FSI NUTRITION

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

ALACER CORP., a California Corporation,

Plaintiff,

v.

FORTRESS SYSTEMS, LLC, a Nebraska Limited Liability Company d/b/a FSI NUTRITION,

Defendant.

FORTRESS SYSTEMS, LLC, a Nebraska Limited Liability Company d/b/a FSI NUTRITION,

Counterclaim Plaintiff,

v.

ALACER CORP., a California Corporation,

Counterclaim Defendant.

No. SACV09-01423 DOC (RNBx)

DEFENDANT FORTRESS SYSTEMS, LLC D/B/A FSI NUTRITION'S ANSWER AND COUNTERCLAIMS TO PLAINTIFF ALACER CORP.'S COMPLAINT FOR DECLARATORY RELIEF FOR PATENT INVALIDITY AND PATENT NON-INFRINGEMENT

COMES NOW, Defendant, Fortress Systems, LLC d/b/a FSI Nutrition, and hereby provides the following Answer and Counterclaims to Plaintiff Alacer Corp.'s Complaint for Declaratory Relief for Patent Invalidity and Patent Non-Infringement:

INTRODUCTION

1. Defendant affirmatively states that no response is necessary to Paragraph 1 of the Complaint as it is merely a summary of the Complaint by Plaintiff.

PARTIES

2. Defendant denies the allegations set forth in Paragraph 2 of the Complaint for lack of knowledge upon which to form a belief.

3. Defendant admits the allegations set forth in Paragraph 3 of the Complaint.

JURISDICTION AND VENUE

4. Defendant admits that the Court has jurisdiction over the subject matter of the Complaint pursuant to 28 U.S.C. §§ 1331, 1338(a), 2201, and 2202. Defendant affirmatively states that no response is necessary to the remaining portions of Paragraph 4 of the Complaint as such remaining portions merely constitute a summary of the Complaint by Plaintiff.

5. Defendant admits the allegations set forth in Paragraph 5 of the Complaint.

6. Defendant admits the allegations set forth in Paragraph 6 of the Complaint.

FACTUAL ALLEGATIONS

7. Defendant admits that Plaintiff Alacer is a California corporation located in Orange County, California. Defendant further admits that Plaintiff distributes "Emergen-C Alert! Energy & Focus Booster." Defendant denies the remaining allegations set forth in Paragraph 7 of the Complaint.

8. Defendant denies the allegations set forth in Paragraph 8 of the Complaint.

9. Defendant admits the allegations set forth in Paragraph 9 of the Complaint.

10. Defendant admits that its counsel sent Plaintiff a letter on November 10, 2009. Defendant denies the remaining allegations set forth in Paragraph 10 of the Complaint.

11. Defendant admits that Plaintiff has rejected Defendant's demands. Defendant denies the remaining allegations set forth in Paragraph 11 of the Complaint.

12. Defendant denies the allegations set forth in Paragraph 12 of the Complaint for lack of knowledge upon which to form a belief.

13. Defendant admits the allegations set forth in Paragraph 13 of the Complaint.

14. Defendant denies the allegations set forth in Paragraph 14 of the Complaint, and in doing so affirmatively states that the '928 Patent speaks for itself.

15. Defendant denies the allegations set forth in Paragraph 15 of the Complaint, and in doing so affirmatively states that the '539 Patent speaks for itself.

16. Defendant admits that an actual justiciable controversy exists between the parties. Defendant denies the remaining allegations set forth in Paragraph 16 of the Complaint.

COUNT I

(Invalidity)

17. Defendant restates and realleges its answers to Paragraphs 1 through 16 above as though set forth in full hereafter.

18. Defendant denies the allegations set forth in Paragraph 18 of the Complaint.

19. Defendant denies the allegations set forth in Paragraph 19 of the Complaint.

20. Defendant denies the allegations set forth in Paragraph 20 of the Complaint.

21. Defendant denies the allegations set forth in Paragraph 21 of the Complaint.

COUNT II

(Non-infringement)

22. Defendant restates and realleges its answers to Paragraphs 1 through 21 above as though set forth in full hereafter.

23. Defendant denies the allegations set forth in Paragraph 23 of the Complaint.

24. Defendant denies the allegations set forth in Paragraph 24 of the Complaint.

25. Defendant denies the allegations set forth in Paragraph 25 of the Complaint.

26. Defendant denies the allegations set forth in Paragraph 26 of the Complaint.

PRAYER FOR RELIEF

WHEREFORE, Defendant Fortress Systems, LLC d/b/a FSI Nutrition, respectfully requests that the Court enter judgment in favor of Defendant on all claims alleged in Plaintiff's Complaint, dismiss Plaintiff's Complaint with prejudice, award Defendant its costs and reasonable attorneys' fees, and grant all such other and further relief as the Court deems appropriate in the present circumstances.

COUNTERCLAIMS

PARTIES

1. Counterclaim Plaintiff Fortress Systems, L.L.C. ("Fortress") is a Nebraska limited liability company having its principal place of business at 2132 South 156th Circle, Omaha, Nebraska 68130.

2. Counterclaim Defendant Alacer Corp. ("Alacer") is a California corporation having its principal place of business at 80 Icon, Foothill Ranch, California 92610.

JURISDICTION AND VENUE

3. This is an action for patent infringement arising under the patent laws of the United States, Title 35 U.S.C. § 1 et seq., and particularly 35 U.S.C. §§ 271 and 281. The Court accordingly has subject matter jurisdiction under the laws of the United States concerning jurisdiction of actions relating to Letters Patent, Title 28 U.S.C. §§ 1331 and 1338(a).

4. The Court has personal jurisdiction over Alacer because Alacer is domiciled in California and has consented to jurisdiction by initiating the present litigation in this Court.

5. Venue is proper in this Court pursuant to 28 U.S.C. § 1400(b), as Alacer "resides" (as defined in 28 U.S.C. § 1391(c)) in this district.

FACTS COMMON TO ALL COUNTS

6. Fortress is the assignee and owner of U.S. Letters Patent 6,294,579 entitled Method for Improving Delivery of Tyrosine Supplementation, duly and legally issued on September 25, 2001 (hereinafter referred to as the "'579 Patent"). This patent is in full force and effect to this day and Fortress has the right to enforce this patent. A copy of the '579 Patent is attached hereto as Exhibit A.

7. The '579 Patent covers the method and use of combining tyrosine and an effervescent to allow human ingestion thereof.

8. Fortress appropriately marks all products covered by the '579 Patent as being subject to the '579 Patent.

9. Alacer produces, distributes and sells "Emergen-C Alert! Energy & Focus Booster" ("Emergen-C Altert!") in both powder and liquid shot form. Human ingestion of the powder form of Emergen-C Alert! is made possible through a combination of tyrosine and an effervescent in infringement of certain claims of the '579 Patent. A copy of the product label of Emergen-C Alert! is attached hereto as Exhibit B.

10. Alacer infringes, and induces infringement of, certain claims of the '579 Patent by producing, distributing and/or selling the powder form of Emergen-C Alert!.

11. Upon information and belief, Alacer will continue to infringe and induce infringement of the '579 Patent in the aforementioned manners unless enjoined from doing so by the Court.

12. Alacer's infringing actions constitute knowing and willful conduct that has not been authorized by Fortress.

COUNT I – INFRINGEMENT OF PATENT U.S. 6,294,579

13. Fortress repeats and realleges, as if set forth fully herein, Paragraphs 1 – 12 above.

14. Alacer knowingly and willfully produces, distributes and sells Emergen-C Alert!, a product that infringes certain claims of the '579 Patent, in violation of 35 U.S.C. § 271(a).

15. Alacer knowingly and willfully induces infringement of certain claims of the '579 Patent by producing, distributing and seller Emergen-C Alert!, a product that infringes certain claims of the '579 Patent, in violation of 35 U.S.C. § 271(b).

16. Upon information and belief, Alacer continues to infringe and induce infringement of certain claims of the '579 Patent in the aforementioned

manners, and unless temporarily and permanently enjoined from doing so by the Court, Alacer will continue to infringe and induce infringement of said patent in a manner or manners that cause irreparable injury to Fortress.

17. Fortress is otherwise without an adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Fortress respectfully prays the Court to:

A. Enter judgment that Alacer has been and is currently infringing and inducing infringement of the '579 Patent pursuant to 35 U.S.C. §§ 271(a) and (b);

B. Grant an injunction against Alacer, and its officers, directors, agents, servants, employees, licensees, successors, assigns, and all those controlled by it, or in active participation with it, permanently enjoining it from further infringement or inducement of infringement of the '579 Patent;

C. Order Alacer to pay Fortress the amount of damages which Fortress has sustained as a result of Alacer's infringement and inducement of infringement of the '579 Patent, including without limitation an award of Fortress' lost profits, and that such damages be trebled under 35 U.S.C. § 284 due to the knowing and willful nature Alacer's infringing conduct;

D. Order Alacer to pay Fortress' reasonable attorneys' fees by declaring this matter an exceptional case pursuant to 35 U.S.C. § 285;

E. Order Alacer to pay prejudgment interest, post judgment interest and all of Fortress' costs in relation to this lawsuit; and

F. Grant all other and further relief as the Court deems equitable under the present circumstances, including punitive damages.

Dated: February 5, 2010

CARROLL, BURDICK & McDONOUGH LLP

By _____
Sean P. Conboy
Daniel H. Wu
Attorneys for Defendant and Counterclaim Plaintiff
FORTRESS SYSTEMS, LLC d/b/a/ FSI NUTRITION

DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Fortress hereby requests a trial buy jury on all triable issues raised in this Answer and Counterclaims to Alacer's Complaint.

Dated: February 5, 2010

CARROLL, BURDICK & McDONOUGH LLP

By _____
Sean P. Conboy
Daniel H. Wu
Attorneys for Defendant and Counterclaim Plaintiff
FORTRESS SYSTEMS, LLC d/b/a/ FSI NUTRITION

Exhibit "A"

US006294579B1

(12) **United States Patent**
Carnazzo

(10) **Patent No.: US 6,294,579 B1**
(45) **Date of Patent: Sep. 25, 2001**

(54) **METHOD FOR IMPROVING DELIVERY OF TYROSINE SUPPLEMENTATION**

(76) Inventor: **Joseph W. Carnazzo**, P.O. Box 150, Boys Town, NE (US) 68010

(*) Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 U.S.C. 154(b) by 0 days.

(21) Appl. No.: **09/415,808**

(22) Filed: **Oct. 11, 1999**

(51) **Int. Cl.**[7] **A61K 31/195**
(52) **U.S. Cl.** **514/567**
(58) **Field of Search** 514/567

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Primary Examiner—Raymond Henley, III
(74) *Attorney, Agent, or Firm*—Rothwell, Figg, Ernst & Manbeck

(57) **ABSTRACT**

The base compound for practicing the present invention is L-tyrosine effervescent powder, granules or tablet. Soluble effervescent powders, granules and tablets are prepared by blending and/or compression and contain, in addition to active ingredients mixtures of acids (citric acid, tartaric acid) and sodium bicarbonate, which release carbon dioxide when dissolved in water. They are intended to be dissolved or dispersed in water before administration. Effervescent powders, granules and tablets should be stored in tightly closed containers or moisture-proof packs, labeled to indicate that they are not to be swallowed directly.

19 Claims, No Drawings

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METHOD FOR IMPROVING DELIVERY OF TYROSINE SUPPLEMENTATION

BACKGROUND OF THE INVENTION

1. Technical Field

This invention relates to a method of effervescent formulation for the promotion of tyrosine or a tyrosine precursor solubility, absorption and accuracy of measure for oral supplementation and its use with vitamin, mineral and nutritional supplements.

2. Description of the Related Art

Tyrosine is the amino acid precursor for the synthesis of the neurotransmitters norepinephrine and dopamine. A number of studies have shown that stress-induced depletion of brain norepinephrine is associated with performance deficit. Tyrosine appears to have a positive impact on stress-induced performance degradation in humans.

Tyrosine is a large, neutral amino acid found in dietary proteins. It is also formed in the liver and, to a limited extent, in the brain from phenylalanine, an essential amino acid. The hydroxylation of phenylalanine by phenylalanine hydroxylase forms tyrosine which is the precursor for the biosynthesis of the catecholamine neurotransmitters dopamine and norepinephrine. The recommended daily intake of phenylalanine is 2.2 grams. Tyrosine is found in both animal and vegetable protein with the level of tyrosine found in human food varying widely. Thus the total daily intake of tyrosine by an individual would vary according to the combination of animal and vegetable protein ingested.

The fundamental structural units of proteins are α-amino-acids, about 20 of which participate prominently in protein formation. These building-block molecules contain at least one carboxyl group and one α-amino group, but differ in the structure of the remainder of the molecule. All except the simplest one, glycine, are capable of existing in both D and L configurations with respect to their α-carbon but proteins contain only the L-enantiomers. The actual protein molecule consists of long-chain polymers which may be looked upon as having resulted from condensation of the amino acids thus producing amide (commonly called peptide) linkages. The number of amino acid molecules so condensed varies widely among different proteins, ranging from perhaps as few as 30 up to tens of thousands. Proteins are thus macromolecules which differ primarily from each other in the number of amino acid residues present and in the sequence of these in the polymer chain.

A neurotransmitter (NT) is defined as a chemical that is selectively released from a nerve terminal by an action potential, interacts with a specific receptor on an adjacent structure, and elicits a specific physiologic response. Most NTs derive from amino acids (or related compounds such as choline). Certain neurons synthesize only one, neuron-specific NT, others have been shown to synthesize 2 neurons or more NTs. Some neurons modify amino acids to form the "amine" transmitters (e.g., norepinephrine, serotonin); others combine amino acids to form "peptide" transmitters (e.g., endorphins, enkephalins); and still other neurons use amino acids unchanged or synthesized as transmitters. A few NTs are not related to amino acids.

Dopamine (DA) is the NT of some peripheral nerve fibers and of many central neurons (e.g., substantia nigra, midbrain, hypothalamus). The amino acid tryosine is taken up by dopaminergic neurons, converted by the enzyme tyrosine hydroxylase to 3,4-dihydroxyphenylalanine (dopa), decarboxylated by the enzyme aromatic L-amino acid decarboxylase to DA, and stored in vesicles. After release, DA interacts with dopaminergic receptors and is then pumped back by active processes (re-uptake) into the prejunctional neurons. DA levels are held constant by changes in tyrosine hydroxylase activity and the enzyme monoamine oxidase (MAO), which is localized in nerve terminals and metabolizes dopamine. DA is metabolized to several metabolites, including specifically homovanillic acid.

Norepinephrine (NE) is the NT of most postganglionic sympathetic fibers and many central neurons (e.g., locus ceruleus, hypothalamus). NE synthesis, like that of DA, also starts with the precursor tyrosine but continues as DA is hydroxylated by dopamine-beta-hydroxylase to form NE, which is stored in vesicles. Upon release, NE interacts with adrenergic receptors. This action is terminated largely by the re-uptake of NE back into the prejunctional neurons. Tyrosine hydroxylase and MAO regulate intraneuronal NE levels. Metabolism of NE occurs via MAO and catechol-O-methyltransferase to inactive metabolites (e.g., normetanephrine, 3-methoxy-4-hydroxyphenylethylene glycol, 3-methoxy-4-hydroxymandelic acid).

One of the factors which limits the extent of resistance the individual can mount apparently is his capacity to produce and respond to the neurotransmitter norepinephrine (NE). Studies with both animals and humans reveal that stress causes a sharp increase in the brain's use of NE because NE tracts are those activated by stress. This surge in use of NE tends to deplete available supplies, and as neural stores decline, so does the capacity to continue normal levels of performance. That the loss of NE is the cause and not merely the correlate of stress-induced behavioral decrements is suggested by the finding that biochemical reduction of NE even in the absence of stress can cause a reduction in performance similar to that caused by stress alone.

Tyrosine must compete with all the other large neutral amino acids for transport across the blood brain barrier. Therefore, the ratio of tyrosine to its amino acid competitors determines its rate of entry into the brain. Once in the brain, more is converted into NE if the neural circuits which require NE are activated. In other words, when the organism is at rest, excess tyrosine is not converted into a larger reserve pool of NE. But when the individual is under stress, available tyrosine is converted into NE at a faster rate to replenish expended NE. If sufficient tyrosine is not available to replace that which is used, NE and performance continue to decline.

This dietary-biochemical-neural pathway suggests a novel approach to slowing stress-induced performance degradation. If stress uses NE and NE decline reduces the level of functioning and performance, NE levels and performance can be restored by additional amounts of NE's precursor tyrosine.

A tyrosine dietary supplement is a realistic alternative to increasing NE levels for slowing stress-induced performance degradation. L-tyrosine is the most commonly used tyrosine supplement for oral consumption, although other tyrosine salts, tyrosine isomers, and synthetic tyrosine formulations exist. L-tyrosine supplementation of 100 mg/kg to 150 mg/kg were the most commonly used dosages in human studies. These dosages created maximal increases that were seen for 2 hours after tyrosine ingestion, thereafter catecholamine levels returned to base line. Supplemental tyrosine (100 mg/kg) has, in fact, been shown to enhance mental performance, improve mood, and diminish symptoms in human subjects exposed to such stressors as cold and high altitude. To achieve desired effects dosages of 7 to 15

grams of L-tyrosine will need to be consumed 1 hour prior to competition or intense exercise.

The problem with existing tyrosine supplements is that accurate dosage is difficult to achieve. This is so because tyrosine does not dissolve well in water or other neutral pH liquids and is very acid liable. This results in irregular dosage, inconsistent results, and limited absorption due to stomach acid destruction.

SUMMARY OF THE INVENTION

This method of promoting delivery of tyrosine, preferably a supplement of L-tyrosine or N-acetyl tyrosine, to the human body includes formation of tyrosine in an effervescent form which allows the tyrosine to dissolve and disperse into solution upon activation with water. The increase in solubility and dispersal gives a more uniform absorption of the product after ingestion. The effervescent form of tyrosine will buffer stomach acid, thus inhibiting stomach acid destruction of tyrosine after consumption. Because the tyrosine is in an effervescent powder packet, effervescent granule packet or tablet form, it offers a more accurate form of administration than bulk powders or suspensions. Tyrosine is soluble in alkaline solutions but does not readily dissolve in water or other neutral pH liquids. The effervescent form of tyrosine having an alkaline pH makes the tyrosine much more soluble in the liquid form. The use of flavorings in the effervescent method to deliver tyrosine is to be used to increase to palatability of the products.

It is therefore a general object of the present invention to provide a method of delivering a precise amount of tyrosine oral supplement to the human body.

It is another object of the invention to provide a tyrosine supplement that is more readily soluble and provides consistent results.

Still another object of the invention is to provide a tyrosine oral supplement that can be combined with other vitamins, minerals, and supplements for enhancement of health, nutrition, and related goals.

These and other objects will be obvious to those skilled in the art.

DESCRIPTION OF THE PREFERRED EMBODIMENT

The inventor has discovered that tyrosine may be uniformly and accurately dispensed when completely dissolved and dispersed in liquid. More specifically, the tyrosine has been created in the form of an effervescent in tablet or particulate form which increases the pH of water to thereby increase the solubility of the tyrosine in the liquid.

L-tyrosine and N-acetyl tyrosine, as used in the prior art, do not readily dissolve in water or other neutral pH liquids. The combination of tyrosine and other chemicals to create an effervescent which, when combined with a proper measure of water, creates a liquid having an alkaline pH, making the tyrosine much more soluble in the liquid. The increase in solubility allows for more uniform absorption of the tyrosine after ingestion.

In addition, because the tyrosine is packaged in either tablet or premeasured particulate form, a precise amount of the compound is ingested. The prior art bulk powder form required the consumer to measure the proper amount of the product and dissolve the product in water. The precision of such measurement is uncertain. Furthermore, because prior art formulations of tyrosine required dissolution of tyrosine in a neutral pH liquid, non-uniform amounts of the tyrosine supplements are commonly undissolved and subsequently not ingested by the consumer. The result is non-uniform dosages and ingestion at non-uniform rates.

The use of a pre-measured effervescent assures complete dissolution and dispersal of the tyrosine and uniform rates of ingestion of the same. These goals are achieved by virtue of increasing the pH of the liquid and the agitation provided by the effervescence of the compound. The soluble effervescent will contain a mixture of acids, bicarbonates, and other agents which release carbon dioxide when dissolved in water.

The chemical formula for tyrosine is $C_9H_{11}NO_3$, and has a molecular weight of 181.19. Tyrosine is a dietary amino acid. In addition to its value as an energy substrate and in protein synthesis, it is a precursor to numerous biogenic amines and neurotransmitters.

Previously, tyrosine's use has been limited by its relative insolubility in water and susceptibility to stomach acid destruction. The use of effervescent technology, therefore, is employed to alter the pH of the water, giving tyrosine greater solubility in water and buffering stomach acid to limit tyrosine destruction.

The method of the present invention relies upon the combination of tyrosine with an effervescent to create an alkaline solution which is ingested by the consumer. The effervescent raises the pH to form an alkaline solution, whereby the tyrosine will uniformly dissolve and completely disperse in solution. In its preferred form, the invention includes a soluble effervescent containing tyrosine, at least one acid, and at least one bicarbonate for releasing carbon dioxide when dissolved in a neutral pH liquid, such as water. In the most preferred form of the invention, L-tyrosine or N-acetyl tyrosine is the type of tyrosine that is utilized.

The effervescent ingredients preferably utilize a mixture of acids, including citric acid and tartaric acid. Sodium bicarbonate or potassium bicarbonate may be utilized for the release of carbon dioxide. In addition, starch, flavoring agents, and lubricants for tablet compression are also utilized in the effervescent tablet. While the effervescent is preferably in the form of a tablet, it may also be utilized in a particulate form. The effervescent must be stored in a sealed container or other moisture-proof package, since water or other liquids will activate the effervescent. This also allows for a method of premeasuring the tyrosine dosage.

The effervescents are not to be swallowed directly, since they release carbon dioxide as they dissolve. Thus, the initial step in the method of the invention is to open the moisture-proof package containing the effervescent and dispense it into a container of water or other pH neutral liquid. Once the effervescent tyrosine has been dissolved and dispersed, the solution should be ingested immediately.

Thus, it can be seen that the invention accomplishes at least all of its stated objectives.

I claim:

1. A method of promoting delivery of tyrosine supplementation into a human body, comprising the steps of:

dispensing a combination of an effervescent and a predetermined amount of tyrosine into a neutral pH liquid;

dissolving the combination substantially in the liquid; and

a human ingesting the liquid.

2. The method of claim 1 wherein the dispensing step includes the initial step of opening a moisture-proof package containing the combination.

3. The method of claim 2 wherein the combination is in the form of a tablet.

4. The method of claim 2 wherein the combination is in the form of a premeasured particulate.

5. The method of claim 3 wherein the dispensing step includes dispensing the tablet in water.

6. The method of claim 4 wherein the dispensing step includes dispensing the particulate in water.

7. The method of claim 1 wherein the dispensing step includes dispensing the combination in water and the dissolving step includes the formation of an alkaline solution.

8. The method of claim 1 wherein the ingestive step is performed approximately one hour prior to assumption of vigorous activity by the human.

9. The method of claim 1 wherein the tyrosine is replaced by a tyrosine precursor.

10. The method of claim 9 wherein the tyrosine precursor is phenylalanine.

11. The method of claim 1 wherein the tyrosine is synthetic tyrosine.

12. In combination:

an effervescent; and

tyrosine mixed with the effervescent in an amount effective to enhance the solubility of the tyrosine in a pH neutral liquid and to enhance the rate of tyrosine absorption in a human when the human ingests the effervescent/tyrosine/liquid solution.

13. The combination of claim 12 wherein the effervescent is in the form of a tablet.

14. The combination of claim 12 wherein the effervescent is in the form of a particulate.

15. The combination of claim 12 wherein the effervescent includes an acid and a bicarbonate.

16. The combination of claim 15 wherein the acid is selected from the group consisting of citric acid and tartaric acid.

17. The combination of claim 15 wherein the bicarbonate is selected from the group consisting of sodium bicarbonate and potassium bicarbonate.

18. The combination of claim 12 comprising an effervescent tablet including:

Tyrosine 0.5 grams–6 grams

Citric Acid 1 grams–12 grams

Sodium Bicarbonate 0.6 grams–7.2 grams; and

Potassium Bicarbonate 0.4 grams–3.6 grams.

19. The combination of claim 18 comprising an effervescent tablet including:

Tyrosine 500 mg;

Citric Acid 100 mg;

Sodium Bicarbonate 600 mg;

Potassium Bicarbonate 400 mg;

Sorbitol/Mannitol 850 mg;

Fruit Flavor 150 mg;

Aspartame 35 mg;

Mineral Oil 35 mg; and

Sodium Lauryl Sulfate 8 mg.

* * * * *

Exhibit "B"

Emergen-C

Directions: As a dietary supplement, mix to maximize energy, drink 1 bottle daily all at once. Shake well before opening.

Supplement Facts

Serving Size 2.5 fl oz (74 ml)

Amount Per Serving		% DV
Calories	25	
Total Carbohydrate	6 g	2%**
Sugars	6 g	
Vitamin C (as ascorbic acid)	250 mg	417%
Niacin	7.5 mg	15%
Vitamin B6 (as pyridoxine hydrochloride)	5 mg	250%
Folic Acid	500 mcg	125%
Vitamin B12 (as methylcobalamin, cyanocobalamin)	112.5 mcg	1,875%
Pantothenic Acid (as calcium pantothenate)	12.5 mg	125%
Calcium (as calcium gluconate, calcium lactate, calcium pantothenate)	25 mg	3%
Magnesium (as magnesium lactate gluconate)	30 mg	8%
Zinc (as zinc amino acid chelate)	1 mg	7%
Manganese (as manganese gluconate)	0.25 mg	13%
Chromium (as chromium polynicotinate)	5 mcg	4%
Sodium (as Ultrimin deep sea minerals)	10 mg	1%
Potassium (as potassium citrate)	100 mg	3%
Proprietary Energy and Focus Complex	195 mg	†
Green Tea Extract, Lecithin, Schisandra Extract, Dimethylaminoethanol Bitartrate, D-Ribose, Stevia (leaf extract), Malic Acid, L-Theanine (Suntheanine®), Taurine, Glycerophosphocholine, Citicoline, L-Carnitine Tartrate, L-Tyrosine, Adenosine 5'-Triphosphate Disodium, CoQ10, Cayenne Pepper Powder, Alpha Lipoic Acid, Quercetin, Vinpocetine		

** Percent Daily Values (DV) are based on 2,000 calorie diet.
† Daily Value not established.

Other Ingredients: Purified water, cane sugar, natural flavors, blueberry juice powder, citric acid, raspberry juice powder, tapioca maltodextrin, silica, glycine, aspartic acid, and tartaric acid. **CONTAINS MILK AND SOY.**

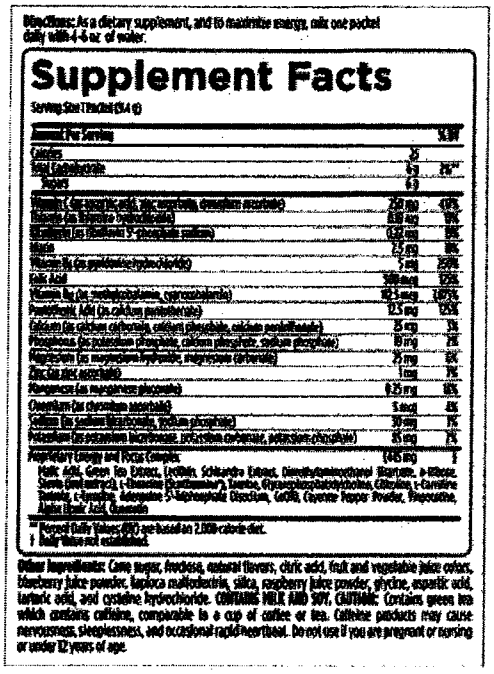
CAUTION: Contains green tea which contains caffeine, comparable to a cup of coffee or tea. Caffeine products may cause nervousness, sleeplessness, and occasional rapid heartbeat.

Do not use if you are pregnant or nursing or under 12 years of age.

Emergen-C Alert, Energy Liquid Shot, Drink Mix, Focus Boost

*These statements have not been evaluated by the Food and Drug Administration. These products are not intended to diagnose, treat, cure, or prevent any disease.

FORTRESS SYSTEMS, LLC
EXHIBIT B
PAGE 1



Directions: As a dietary supplement, add to maximize energy, mix one packet daily with 4-6 oz. of water.

Supplement Facts

Serving Size 1 Packet (5.4 g)

Amount Per Serving		% DV
Calories	25	
Total Carbohydrate	6 g	2%*
Sugars	6 g	
Vitamin C (as ascorbic acid, plus naturally occurring vitamin C from fruit)	250 mg	417%
Vitamin A (as beta-carotene)	600 mcg	67%
Vitamin E (as dl-alpha tocopheryl acetate)	100 IU	333%
Folate	400 mcg	100%
Vitamin B6 (as pyridoxine hydrochloride)	2 mg	100%
Folic Acid	200 mcg	50%
Vitamin B12 (as methylcobalamin, cyanocobalamin)	100 mcg	1667%
Pantothenic Acid (as calcium pantothenate)	12.5 mg	125%
Calcium (as calcium carbonate, calcium phosphate, calcium pantothenate)	25 mg	3%
Phosphorus (as potassium phosphate, calcium phosphate, sodium phosphate)	10 mg	2%
Magnesium (as magnesium hydroxide, magnesium carbonate)	25 mg	6%
Zinc (as zinc ascorbate)	1 mg	7%
Manganese (as manganese gluconate)	0.25 mg	13%
Chromium (as chromium ascorbate)	5 mcg	4%
Sodium (as sodium bicarbonate, sodium phosphate)	30 mg	1%
Potassium (as potassium bicarbonate, potassium carbonate, potassium phosphate)	35 mg	1%
Proprietary Energy and Focus Complex	645 mg	†

Malic Acid, Green Tea Extract, Arginine, Schisandra Extract, Dimethylaminoethanol Bitartrate, L-Ribose, Stevia (Rebaudioside A), L-Theanine (Suntheanine®), Taurine, Glycerophosphocholine, Citicoline, L-Carnitine Tartrate, L-Tyrosine, Asteraxanthin 5-Hydroxytryptophan Disodium, Caffeine, Cayenne Pepper Powder, Piperazine, Alpha Lipoic Acid, Chromium

* Percent Daily Values (DV) are based on a 2,000 calorie diet.
† Daily Value not established.

Other Ingredients: Cane sugar, fructose, natural flavors, citric acid, fruit and vegetable juice colors, blueberry juice powder, tapioca maltodextrin, silica, raspberry juice powder, glycine, aspartic acid, tartaric acid, and cysteine hydrochloride. CONTAINS MILK AND SOY. CAUTION: Contains green tea which contains caffeine, comparable to a cup of coffee or tea. Caffeine products may cause nervousness, sleeplessness, and occasional rapid heartbeat. Do not use if you are pregnant or nursing or under 12 years of age.

Emergen-C Alert, Energy Liquid Shot, Drink Mix, Focus Boost

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FORTRESS SYSTEMS, LLC
EXHIBIT B
PAGE 2

Emergen-C Alert! Energy & Focus Booster Flavored Fizzy Drink Mix, Berry Flavored, Berry Flavor 10 packets

product details | ingredients | reviews | directions

Alert! Energy & Focus Booster*

Mix with 4-6 oz of water and enjoy.

Net Wt. 0.3 Oz (9.4 g) / Packet (10 Packets)

1.800.854.0249

*This statement has not been evaluated by the Food and Drug Administration. This product is not intended to diagnose, treat, cure or prevent any disease.

Facts:

Supplement Facts

Serving Size:	1 Packet (9.4 g)
Servings Per Container:	10
Amount per Serving	
Calories Total	25
	%

Amount per Serving		Daily Value+
Sodium (as sodium bicarbonate, sodium phosphate)	30 mg	1%
Potassium (as potassium bicarbonate, potassium carbonate, potassium phosphate)	85 mg	2%
Total Carbohydrate	6 g	2%
Sugars	6 g	
		% Daily Value
Vitamin C (as ascorbic acid, zinc ascorbate, chromium ascorbate)	250 mg	417%
Thiamin (B1) (as thiamine hydrochloride)	0.19 mg	13%
Riboflavin (B2) (as riboflave 5'-phosphate sodium)	0.22 mg	13%
Niacin (B3)	2.5 mg	13%
Vitamin B6 (as pyridoxine hydrochloride)	5 mg	250%
Folate,Folic Acid,Folacin	500 mcg	125%
Vitamin B12 (as methylcobalamin, cyanocobalamin)	112.5 mcg	1875%
Pantothenic acid (as calcium pantothenate)	12.5 mg	125%
Calcium (as calcium carbonate, calcium phosphate, calcium pantothenate)	25 mg	3%
Phosphorus (as potassium phosphate, calcium phosphate, sodium phosphate)	19 mg	2%
Magnesium (as magnesium hydroxide, magnesium carbonate)	25 mg	6%
Zinc (as zinc ascorbate)	1 mg	7%
Manganese (as manganese gluconate)	0.25 mg	13%
Chromium (as chromium	5 mcg	4%

FORTRESS SYSTEMS, LLC
EXHIBIT B
PAGE 4

ascorbate)	
Proprietary Energy & Focus Blend	1445 mg*
Malic Acid	
Green Tea Extract	
Lecithin	
Schisandra Extract	
Dimethylaminoethanol Bitartrate	
D Ribose	
Stevia Leaf Extract	
L Theanine Suntheanine	
Taurine	
Glycerophosphatidylcholine	
Citicoline	
L Carnitine L Tartrate	
L Tyrosine	
Adenosine 5 Triphosphate Disodium	
CoQ10	
Cayenne Pepper Powder	
Vinpocetine	
Alpha Lipoic Acid	
Quercetin	

* Daily Value not established.
+ Percent Daily Values are based on a 2,000 calorie diet. Your daily values may be higher or lower depending on your calorie needs.

Warnings

Contains green tea which contains caffeine, comparable to a cup of coffee or tea. Caffeine products may cause nervousness, sleeplessness and occasional rapid heartbeat. Do not use if you are pregnant or nursing or under 12 years of age.

Alacer Corp.

write review

our price: $9.49

in stock

quantity: 1

Add to bag

Save to your list™

payment and shipping options

Buy Fast. Feel Secure. Pay Later® Subject to credit approval.
Details

Recently viewed items - click here to clear

Emergen-C
Alert! Energy &
Focus Booster

FORTRESS SYSTEMS, LLC
EXHIBIT B
PAGE 5

Flavored Fizzy Drink Mix, Berry Flavored, Berry Flavor

our price: $9.49 Buy

prescriptions | medicine cabinet | home medical | cough, cold & flu | fsa store | shaving | oral care | hair care | skin care | makeup & accessories | gnc store | diet & fitness | toys & games | coupons & rebates | top offers | green & natural | men's | personal care | household & pets | pet store | baby & mom | food | sports nutrition | vitamins | sexual well-being | discount contact lenses from vision direct | beauty.com

Alacer Corp. v. Fortress Systems, LLC
United States District Court, Action No. SACV09-01423-DOC-(RNBx)

PROOF OF SERVICE BY MAIL

I declare that I am employed in the County of Los Angeles, California. I am over the age of eighteen years and not a party to the within cause; my business address is 633 West Fifth Street, Suite 5100, Los Angeles, CA 94104. On February 5, 2010, I served the enclosed:

DEFENDANT FORTRESS SYSTEMS, LLC d/b/a/ FSI NUTRITION'S ANSWER AND COUNTERCLAIMS TO PLAINTIFF ALACER CORP.'S COMPLAINT FOR DECLARATORY RELIEF FOR PATENT INVALIDITY AND PATENT INVALIDITY AND PATENT NON-INFRINGEMENT

on the parties in said cause (listed below) by enclosing a true copy thereof in a sealed envelope and, following ordinary business practices, said envelope was placed for mailing and collection (in the offices of Carroll, Burdick & McDonough LLP) in the appropriate place for mail collected for deposit with the United States Postal Service. I am readily familiar with the Firm's practice for collection and processing of correspondence/documents for mailing with the United States Postal Service and that said correspondence/documents are deposited with the United States Postal Service in the ordinary course of business on the same day.

Daniel M. Cislo, Esq.
CISLO & THOMAS LLP
1333 Second Street, Suite 500
Santa Monica, CA 90401
Telephone: (310) 451-0647
Fax: (310) 394-4477

I declare that I am employed in the office of a member of the Bar of this Court, at whose direction this service is made, and that this declaration was executed on February 5, 2010, at Los Angeles, California.

Janet M. Jerome